APPEAL NO. 010249

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 17, 2001, a hearing was held. The hearing officer determined that (1) the appellant's (claimant) compensable injury of _____, did not extend to or include his lower back, and (2) the claimant did not have disability.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant's compensable injury did not extend to or include his lower back. The claimant asserted that he injured his lower back on _____, simultaneous with his other injuries. The claimant had the burden to prove that he sustained damage or harm to the physical structure of the body, which arose out of and in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The hearing officer found, in Finding of Fact No. 5, that the claimant did not injure his lower back while engaged in the exercise of his job duties on _____. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In his appeal, the claimant asserts that the hearing officer erred in determining that any back injury sustained on _____, was subsumed by a subsequent back injury on _____. In the discussion portion of the decision, the hearing officer stated:

> Insofar as the extent of Claimant's injury is concerned, the Hearing Officer notes that although a medical record of June 5, 2000 does indicate that Claimant made reference to some low back pain on that date, thereby suggesting that Claimant's on-the-job accident of _____ may have resulted in his sustaining a minor low back injury, the evidence further indicates that, contrary to Claimant's protestations, Claimant did, indeed, sustain a subsequent back injury on or about _____, which injury in no way arose out of the course and scope of Claimant's employment with Employer. Since it appears that Claimant's subsequent back injury subsumed any back injury which Claimant may have sustained on _____, it is appropriate to determine that Claimant's current low back injury is not compensable.

The claimant argues that the hearing officer's statement was, in effect, a ruling that the _____, incident was the sole cause of his current condition, an issue which was not before the hearing officer. The claimant further contends that the hearing officer misapplied the law in reaching such determination.

Had the hearing officer intended to reach a determination on the sole cause of the claimant's injury, we agree that the hearing officer would have applied the wrong legal standard, as stated above. We have held that an injury may be compensable even though aggravated by an existing or subsequently occurring injury or condition. Texas Workers' Compensation Commission Appeal No. 952061, decided January 22, 1996; Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991. Therefore, in order to establish that something was the sole cause of an injury, the carrier must prove more than the mere existence of a subsequent injury. *See* Texas Workers' Compensation Commission Appeal No. 970229, decided March 24, 1997. It is well settled that there can be only one sole cause, but there may be more than one producing cause. Texas Workers' Compensation Commission Appeal No. 951608, decided November 10, 1995.

Notwithstanding, we read the hearing officer's statement above as a discussion of the evidence presented and not a determination on the matters in controversy. In our view, the hearing officer's discussion of the evidence is not necessarily inconsistent with Finding of Fact No. 5 and, therefore, does not affect our decision on the issue of compensability.

Disability

The hearing officer did not err in determining that the claimant did not have disability. The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant's lower back injury was found not to be included in the compensable injury, the hearing officer properly concluded that the claimant did not have a disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge